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EXAMINER

VYAS, ABHISHEK

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FRANCOIS PERREAULT

Appeal 2016-005989
Application 12/683,678
Technology Center 3600

Before ERIC B. CHEN, JOSEPH P. LENTIVECH, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 21, 25–32, 41–48, 52, and 53, which are all of the claims pending in the application. Claims 1–20, 22–24, 33–40, and 49–51 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Technology

The application relates to “enforcing community covenant rules and guidelines.” Spec. Abstract.

Illustrative Claim

Claim 21 is illustrative and reproduced below:

21. A method of selecting, by different communities, both community rules for enforcing by a common sub-contractor, and associated remedies for violation of the selected communities rules in the different communities, the method comprising:

- (a) with respect to a first community,
 - (1) determining and facilitating the determination of, by a community representative of the first community, predetermined actions to be taken by the sub-contractor for violations of community rules of the first community, comprising,
 - (i) communicating over the Internet, for view by a community representative of the first community,
 - (A) a plurality of community rules selectable for enforcement in the first community, and
 - (B) a plurality of remedies available for selection by the community representative of the first community for violation of a selected community rule, wherein each remedy comprises a predetermined action to be taken by the sub-contractor,
 - (ii) presenting, to the community representative of the first community, one or more of the communicated community rules,
 - (iii) selecting, by the community representative of the first community, one or more of the communicated community rules that are presented, and for each community rule so selected,
 - (A) presenting, to the community representative of the first community, communicated remedies available for selection by the community representative of the first community

- for violation of the selected community rule, and
- (B) selecting, by the community representative of the first community, one or more of the communicated remedies that are presented,
- (iv) based on the selections of said step(a)(1)(iii) performed by the community representative of the first community, communicating over the Internet, from the community representative of the first community, user input representing the selected one or more community rules and selected one or more remedies for each respective selected community rule,
- (v) receiving over the Internet, from the community representative of the first community, the user input, and
- (vi) based on the received user input from the community representative of the first community, associating in non-transitory computer-readable medium, for the first community, the selected one or more respective remedies with each selected community rule, violation of which the selected one or more respective remedies apply; and
- (2) after associating with the first community the selected one or more respective remedies with each selected community rule, facilitating enforcement by the sub-contractor of the community rules selected by the community representative of the first community by,
 - (i) receiving, from the sub-contractor, user input representing a community rule of the first community,

- (ii) determining the selected one or more respective remedies of the first community that have been associated in said step (a)(1)(iii) with such community rule, and
 - (iii) causing to be displayed for view by the sub-contractor the determined one or more selected remedies associated with such community rule, whereby the sub-contractor is informed of and may take the one or more predetermined actions as selected by the community representative of the first community in response to a violation of such community rule; and
- (b) with respect to a second, different community,
 - (1) determining and facilitating the determination of, by a community representative of the second community, predetermined actions to be taken by the sub-contractor for violations of community rules of the second community, comprising,
 - (i) communicating over the Internet, for view by a community representative of the second community,
 - (A) a plurality of community rules selectable for enforcement in the second community, and
 - (B) a plurality of remedies available for selection by the community representative of the second community for violation of a selected community rule, wherein each remedy comprises a predetermined action to be taken by the sub-contractor,
 - (ii) presenting, to the community representative of the second community, one or more of the communicated community rules,

- (iii) selecting, by the community representative of the second community, one or more of the communicated community rules that are presented, and for each community rule so selected,
 - (A) presenting, to the community representative of the second community, communicated remedies available for selection by the community representative of the second community for violation of the selected community rule, and
 - (B) selecting, by the community representative of the second community, one or more of the communicated remedies that are presented,
- (iv) based on the selections of said step(b)(1)(iii) performed by the community representative of the second community, communicating over the Internet, from the community representative of the second community, user input representing the selected one or more community rules and selected one or more remedies for each respective selected community rule,
- (v) receiving over the Internet, from the community representative of the second community, the user input, and
- (vi) based on the received user input from the community representative of the second community, associating in the non-transitory computer-readable medium, for the second community, the selected one or more respective remedies with each selected community rule, violation of which the

selected one or more respective remedies apply,

- (vii) wherein, with respect to a community rule selected by both the first community and the second community, the selection of a remedy of the first community associated with violation thereof is independent of the selection of a remedy of the second community associated with violation thereof; and
- (2) after associating with the second community the selected one or more respective remedies with each selected community rule, facilitating enforcement by the sub-contractor of the community rules selected by the community representative of the second community by,
 - (i) receiving, from the sub-contractor, user input representing a selection of a community rule of the second community,
 - (ii) determining the selected one or more respective remedies of the second community that have been associated in said step (b)(1)(iii) with such community rule, and
 - (iii) causing to be displayed for view by the sub-contractor the determined one or more selected remedies associated with such community rule, whereby the sub-contractor is informed of and may take the one or more predetermined actions as selected by the community representative of the second community in response to a violation of such community rule;
- (c) whereby, for violation of a community rule selected by both the community representative of the first community and the community representative of the second community,

- (1) the first and second community representatives can respectively select one or more different predetermined actions to be taken by the sub-contractor, and
- (2) the sub-contractor is informed of and can take the one or more different predetermined actions as respectively selected by the first and second community representatives;
- (d) wherein said steps (a)(1)(i), (a)(1)(v), (a)(1)(vi), (b)(1)(i), (b)(1)(v), (b)(1)(vi), and (c) are performed by execution, on a processor of a computer, of computer-readable instructions contained on a non-transitory computer-readable medium.

Rejection

Claims 21, 25–32, 41–48,¹ 52, and 53 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 4.

ISSUES

Did the Examiner err in concluding claims 21, 25–32, 41–48, 52, and 53 are directed to ineligible subject matter?

ANALYSIS

Section 101 defines patentable subject matter: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. The Supreme Court, however, has “long held that this provision contains an important implicit exception” that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Mayo*

¹ Claim 49 was cancelled in an Amendment After Final dated April 28, 2015, and entered in an Advisory Action dated May 29, 2015.

Collaborative Servs. v. Prometheus Labs., Inc., 566 U.S. 66, 70 (2012) (quotation omitted). “Issues of patent-eligible subject matter are questions of law and are reviewed without deference.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1369 (Fed. Cir. 2011). To determine patentable subject matter, the Supreme Court has set forth a two part test.

“First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts” of “laws of nature, natural phenomena, and abstract ideas.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). “The inquiry often is whether the claims are directed to ‘a specific means or method’ for improving technology or whether they are simply directed to an abstract end-result.” *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017). A court must be cognizant that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas” (*Mayo*, 566 U.S. at 71), and “describing the claims at . . . a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Instead, “the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

In the second step, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). The Supreme Court has “described step two of this analysis as a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is

sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself.” *Id.* (quotation omitted).

Claim 21

The Examiner concludes “[t]he claims are directed to an abstract idea of enforcing community covenant rules and guidelines for a selected community among different communities, and specifically relates to the violation of community rules and guidelines, and associated remedies for violation of the selected community’s rules among the different communities.” Ans. 3.

Appellant argues claim 21 does not “monopolize” the abstract idea because “there are an innumerable number of methodologies related to enforcing community covenant rules and guidelines that are not encompassed by recited claim 21.” App. Br. 14. However, we agree with the Examiner (Ans. 7) that “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Id.*

Appellant also argues the claims cannot be ineligible subject matter, routine, or conventional because “the Examiner acknowledges the novelty and nonobvious[ness] of the claimed methods.” App. Br. 17. However, we agree with the Examiner (Ans. 14) that “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101

categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981).

Appellant further contends the use of the Internet provides “a technical solution to the problem of keeping a sub-contractor informed regarding rules and remedies to be enforced for various communities.” App. Br. 14–16. We are not persuaded by this argument. The Federal Circuit has held that “receiving transmitted data over a network and displaying it to a user merely implicates purely conventional activities that are the ‘most basic functions of a computer.’” *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (quoting *Alice*, 134 S. Ct. at 2359). Put another way, “[a]n abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea.” *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016). Appellant has not sufficiently explained how providing the information via the Internet is any different than providing the same information via phone, paper, or in person. *See* Ans. 4 (concluding the claims “are interpreted as organizing a human activity” and “this data file could be a paper file folder”); *CyberSource*, 654 F.3d at 1371 (“methods which can be performed mentally, or which are the equivalent of human mental work, are unpatentable abstract ideas”) (citing *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). We agree with the Examiner that this is neither a technical problem nor a technical solution, but merely the application of an abstract idea on a computer via the Internet. “We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are insufficient to pass the test of an inventive concept in the application of an

abstract idea.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (quotation omitted).

Here, the claims merely gather the rules and remedies for each community and then display them to the sub-contractor. As the Federal Circuit has held, “the practices of collecting, analyzing, and displaying data, with nothing more, are practices whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097–98 (Fed. Cir. 2016) (quotation omitted); *see also CyberSource*, 654 F.3d at 1370 (“mere data-gathering steps cannot make an otherwise nonstatutory claim statutory”) (quotation omitted).

Accordingly, we sustain the rejection of claim 21.

Claims 32, 41, and 52

Appellant argues certain steps in claim 32 “are performed by a server, making it even harder to dismiss such functionality as patent-ineligible.” App. Br. 21. Similarly, Appellant argues claim 41’s “use of a server” represents “a technical solution.” *Id.* at 21–22. And Appellant argues claim 52 is patentable for the same reasons as claim 41. *Id.* at 23.

“[A]s applied to a computer-implemented invention, it is often helpful to ask whether the claims are directed to ‘an improvement in the functioning of a computer,’ or merely ‘adding conventional computer components to well-known business practices.’” *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1270 (Fed. Cir. 2016) (quoting *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1338 (Fed. Cir. 2016)). As with “the Internet” in claim 21, we conclude that “use of a server” is merely adding conventional computer components to well-known business practices

(i.e., selecting community rules and remedies). “[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

Accordingly, we sustain the rejection of claims 32, 41, and 53.

Claims 25–31, 42–48, and 53

Appellant argues the Examiner has not addressed whether the additional limitations of dependent claims 25–31, 42–48, and 53 constitute “substantially more.” App. Br. 20, 22–23, 24. The Examiner, however, concludes “[t]here is no recitation of any limitation that is interpreted as significantly more in the dependent claims. While these claims may have a narrower scope . . . , no dependent claim contains an ‘inventive concept’” and the dependent claims “do not recite a function that improves the computer or network itself.” Ans. 16–17. Appellant has not identified any specific limitation in any dependent claim that Appellant believes amounts to substantially more.

Accordingly, given the record before us, we sustain the Examiner’s rejection of claims 25–31, 42–48, and 53.

DECISION

For the reasons above, we affirm the Examiner’s decision rejecting claims 21, 25–32, 41–48, 52, and 53.

No time for taking subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED